Case No: BL-2018-000862
SCCO reference: SC-2021-APP-00052

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
Strand, London WC2A 2LL

Date: 11 November 2021

Before :

COSTS JUDGE LEONARD

- -

Between :

Blacklion Law LLP	**Claimant**
- and -	
(1) Amira Nature Foods Ltd	**Defendants**
(2) Mr Karan Chanana	

- -
- -

Richard Slade (Richard Slade & Company) for the Claimant
Anthony Jones (instructed by **Clyde & Co** for the Defendants

Hearing date: 13 August 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

COSTS JUDGE LEONARD

Costs Judge Leonard:

1. Before I turn to the facts of this case, it may help to put matters in their proper context if I summarise some of the relevant law relating to solicitors' bills and their assessment as between solicitor and client.

2. The term "statute bill" is commonly employed to describe a solicitor's bill that complies with the requirements of section 69(2) of the Solicitors Act 1974 (valid signature and delivery) and with other requirements (for example as to the adequacy of information provided) established by a long line of judicial authority. A solicitor's invoice that does not qualify as a statute bill has no legal force.

3. Section 69(1) of the 1974 Act precludes any action from being brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill is delivered in accordance with the requirements of subsection (2). There are some limited exceptions to the one-month provision but a solicitor must, by virtue of section 69(1), deliver a statute bill before issuing a CPR Part 7 claim for the recovery of legal fees, and it is not possible to obtain a valid judgment upon a bill if it is not a statute bill.

4. A non-statute interim invoice, rendered before the solicitor has completed the task in hand, is nothing more than a request for payment on account. It is possible to render statute bills on an interim basis but, as "Cook on Costs 2021" puts it, at [2.6] and [2.8]:

> "Interim statute bills during the currency of the retainer can arise in only two ways: by natural break or agreement…If there is no agreement in the client care letter or other document regarding the delivery of interim bills, the solicitor has to rely on the concept of a natural break in protracted litigation. There is authority for the rendering of an interim statute bill at such points but unfortunately, there is little authority to help to identify what is a natural break. In *Chamberlain v Boodle and King (a firm)* [1982] 3 All ER 188, [1982] 1 WLR 1443, CA, Lord Denning said: 'It is a question of fact whether there are natural breaks in the work done by a solicitor so that each portion of it can and should be treated as a separate and distinct part in itself, capable of and rightly being charged separately and taxed separately'."

5. *Chamberlain v Boodle and King* also established that where there is no natural break, a series of bills may be treated as one statute bill even though they are not, individually, statute bills (see *Bari v Rosen* [2012] EWHC 1782 (QB)).

6. An order for the detailed assessment of a statute bill (but not a non-statute bill) may be made under section 70 of the 1974 Act:

> "(1) Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment is completed.
>
> (2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with

> the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—
>
> (a) that the bill be assessed; and
>
> (b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.
>
> (3) Where an application under subsection (2) is made by the party chargeable with the bill—
>
> (a) after the expiration of 12 months from the delivery of the bill, or
>
> (b) after a judgment has been obtained for the recovery of the costs covered by the bill, or
>
> (c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill,
>
> no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the assessment as the court may think fit.
>
> (4) The power to order assessment conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill…"

7. Where a client is sued by a solicitor for unpaid fees, the High Court may, in the exercise of its inherent jurisdiction, order what is commonly referred to as a "common law" or "non-statutory" assessment. It is common practice for the court so ordering to give judgment for the amount found to be due on assessment.

8. The Civil Procedure Rules at CPR 46.9 and 46.10 address solicitor/client assessments. CPR 46.10 sets out a number of procedural provisions expressly applicable to detailed assessments under the 1974 Act, subject to any contrary order. They provide for the solicitor to serve a detailed breakdown of the costs to be assessed. Precedent P, in the Schedule of Costs Precedents at Practice Direction 47, is a model form of breakdown, similar to the model (paper) form used on assessments between opposing parties.

9. For the purposes of this judgement I also need to refer to CPR 16.5:

> " (1) In his defence, the defendant must state –
>
> (a) which of the allegations in the particulars of claim he denies;
>
> (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and
>
> (c) which allegations he admits.
>
> (2) Where the defendant denies an allegation –

(a) he must state his reasons for doing so; and

(b) if he intends to put forward a different version of events from that given by the claimant, he must state his own version.

(3) A defendant who –

(a) fails to deal with an allegation; but

(b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

(4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.

(5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation."

The Background

10. These proceedings started in the Chancery Division (Business and Property Courts) in April 2018. The Claimant took proceedings against the Defendants in respect of the unpaid balance of a number of invoices. The invoices related to two retainers. The first was a general retainer (the "General Retainer") covering a variety of matters, described by the Claimant as corporate and commercial, litigation, employment and other incidental work. The second retainer ("the Avatar Retainer") concerned services relating to a proposed bond issue which never took place. The proceedings before me are concerned only with invoices rendered under the General Retainer.

11. Between 5 December 2016 and 1 December 2017, the Claimant had rendered ten invoices under the General Retainer. Two of them (296 and 301, for reasons I shall come to) are set off against each other so as, in effect, to represent a single invoice for the same period. In chronological order the invoices are numbered 274, 285, 296/301, 302, 304, 312, 314, 322 and 1179. In total they came to £441,073.51, against which, in a series of payments between January and July 2017 (made, at the option of the Claimant in accordance with an agreed arrangement, by transfer of the equivalent value of treasury shares in the first Defendant) had been paid £239,882.70. After deducting a number of credit notes issued between February and June 2017 against invoices 302, 304, 312 and 314, the Claimant claimed an outstanding overall balance of £118,510.81. There does not appear to have been any correlation between the amounts paid from time to time and any particular invoice.

12. The claims under the General Retainer and the Avatar Retainer were defended, and a counterclaim in negligence was made (and subsequently, I understand, discontinued) in relation to the Avatar Retainer.

13. The first Defendant's Defence did not take issue with the terms of the General Retainer, the delivery of the Claimant's General Retainer invoices, the amounts of those invoices, the assertion in the Particulars of Claim that they were all supported by detailed time

narratives and details of disbursements incurred, or the amounts paid against them. The Defence rather relied upon the proposition that an alleged lack of particularity in relation to the services rendered failed to establish that the Claimant had the right to render the invoices and the Defendant an obligation to pay them.

14. In the absence of such particulars the Defendants asserted that they could offer no meaningful response to the claim, whilst at the same time saying that first Defendant had, in correspondence with the Claimant, raised a dispute in relation to whether the fees in these invoices had been properly incurred and made an open offer to resolve the General Retainer dispute on the basis that it would release more shares to the value of £118,510.81 following "a formal, binding, assessment of the Claimant's invoices under the General Retainer by a mutually agreed costs draftsman".

15. The Defence did not deny, or put the Claimant to proof that, the Claimant's General Retainer invoices were valid statute bills. If the Defendant had put that in issue it could, potentially, have furnished a complete defence to the General Retainer claim and forced the Claimant, if it wanted to recover anything, to deliver a final, valid bill.

16. On 15 February 2021 the Claimant obtained an order from Deputy Master Nurse for summary judgment for the sum, "if any", found due in respect of the General Retainer (the dispute over the Avatar Retainer continues in the Chancery Division).

17. The wording of the order, insofar as relevant, is as follows:

> "… UPON the parties agreeing that the General Retainer issue should be referred to the SCCO for the assessment provided for below….
>
> 1. On the Claimant's application… (1) there be judgment for the Claimant in the sum (if any) found due in respect of the General Retainer issue on the assessment provided for by paragraph 2 of this order...
>
> 2. … there be an inquiry into and assessment of the sum payable to the Claimant in respect of its invoices 304, 312, 314, 322 and 1179 relating to the General Retainer, as adjusted by any relevant credit notes, which shall be undertaken by a Costs Judge in accordance with the directions in paragraph 3 below…
>
> 3. The following directions shall apply to the inquiry and assessment:
>
> (1) the First Defendant shall by 4pm on 19 March 2021 serve Points of Dispute on the Claimant setting out its objections to any items in accordance with paragraph 8.2 of PD 47
>
> (2) the Claimant shall by 4pm on 16 April 2021 serve on the First Defendant its Replies to the objections by the First Defendant;
>
> (3) by 4pm on 23 April 2021 the parties shall apply to the Costs Judge for the listing and disposal of the inquiry and assessment (and shall lodge a copy of this order and their combined Points of Dispute and Replies in support of that application);

> 4. Pursuant to CPR 25.7, the First Defendant shall pay to the Claimant the sum of £40,000 on account of the sum payable to the Claimant by virtue of paragraph 1(1) of this Order pending the outcome of the inquiry and assessment…"

18. The costs of that part of the claim for which the Claimant had obtained summary judgment were reserved to the Costs Judge.

19. At the hearing before Deputy Master Nurse, the Claimant was represented by Mr Richard Slade of Richard Slade and Company and the Defendants by Mr Benjamin Williams QC. In respect of the General Retainer, there was only one issue to be determined. As Mr Williams put it in his skeleton argument, "the only dispute dividing the parties on the general retainer is the overall reasonableness of the claimant's charges". Both parties accepted that there should be an assessment before a Costs Judge.

20. That left the question of whether, as Mr Williams put it, " the claimant is wrong to contend that this means that liability is admitted and judgment should be entered at this stage… Liability is denied, because D1 maintains that it has already paid everything the claimant was owed. Whether more is owed is therefore the very thing which the assessment must determine".

21. This issue was resolved in brisk and pragmatic fashion by the Deputy Master, who suggested that he give judgment for the Claimant for the amount, if any, found due following assessment. The order was worded accordingly, and the wording to which I have referred above was agreed by the parties (as represented by Mr Slade and Mr Williams respectively) the following day.

22. According to the skeleton arguments filed for the hearing before Deputy Master Nurse, judgment was sought only against the first Defendant in relation to the General Retainer claim, and a stay was proposed as against the second Defendant. As the order expressly gives judgment "on the Claimant's application" and makes provision for an assessment only as between the Claimant and the first Defendant, the logical conclusion is that there is a judgment and that there is to be an assessment only as between the Claimant and the first Defendant. I can find no reference in the order to a stay of the claim against the second Defendant, the current status of which is unclear to me.

23. I note however that Points of Dispute filed and served on 22 March 2021 were (contrary to the terms of Deputy Master Nurse's order) purportedly served on behalf of both Defendants. Similarly, the application addressed by this judgment is made on behalf of both Defendants and a witness statement provided in support by the second Defendant purports to be made in relation to the liability of both Defendants. Fortunately, for the purposes of the decision I have to make, the apparent lack of clarity as to the position of the second Defendant does not matter. Generally I will refer, purely for consistency, to "the Defendants" rather than the first Defendant.

24. The Points of Dispute having been served, the Claimant (having secured an extension of time) served Replies on 26 April 2021. I have a copy of the Combined Points of Dispute and Replies. They run to 22 pages, but do not include a spreadsheet prepared on behalf of the Defendants taking issue with individual items, which I do not believe I have seen.

25. On 4 May 2021 the Claimant filed at the SCCO its application for the disposal by a Costs Judge of the enquiry and assessment. On 20 May 2021, I arranged a 30 minute appointment for directions on 8 July.

26. In the meantime the Defendant instructed new solicitors, Clyde & Co, in place of its previous advisers, Grosvenor Law. On 22 June 2021 Clyde & Co wrote to Richard Slade & Company proposing that directions should incorporate provision for "a bill of costs…" (which, in context, appears to have meant a breakdown of the kind normally prepared for statutory detailed assessments under the 1974 Act) " … in respect of every invoice claimed"; that the Claimant either supply or allow inspection of its files; and that revised Points of Dispute and Replies be served, as necessary. They also asked the Claimant to state its position on whether "statute bills" had been delivered to the Defendant under the General Retainer.

27. Richard Slade & Company replied on 28 June to the effect that the court had ordered a common law assessment, not a statutory assessment; that the points of Dispute and Replies had already been served without the need for any further breakdown; that the Claimant was out of time to apply for a statutory assessment; and that the court had no power to require the Claimant to disclose its files.

28. On the afternoon of 2 July 2021 the Defendant filed an application for an order to the effect that the Claimant prepare and deliver to the Defendants a final bill in chronological spreadsheet format, in two parts. The first would cover invoices 274, 285, 296/301 and 302, to be assessed pursuant to the Solicitors Act 1974, and the second invoices 304, 312, 314, 322 and 1179, to be assessed pursuant to the Order of Deputy Master Nurse. The order sought was also to provide for the Defendants to be entitled to inspection of the Claimant's file pertaining to the General Retainer, for further Points of Dispute and Replies, and the service of any witness evidence upon which the parties would wish to rely.

29. I declined to hear the application on 8 July, first because it was not processed through the SCCO's CE-filing system until 5 July and there was insufficient time for good service, and secondly because the 30 minute appointment I had arranged would not accommodate it. I gave directions with a view to hearing the application on 13 August 2021, and in the meantime listed the assessment hearing for April 2022. The purpose of this judgment is to address the application.

The Claimant's General Retainer and Terms of Business

30. The terms of the General Retainer are recorded in a letter dated 2 November 2016. In the letter, the first Defendant is referred to as "the Company". Insofar as pertinent it reads (including some minor spelling errors that I have not corrected):

> "… I enclose our Terms of Business that apply to all the services which we provide to you as our client…
>
> We have agreed that we will charge the Company a minimum retainer fee of £25,000 per month for three months subject to review at the end of this period. Any time incurred about the retainer will be
>
> invoices separately with supporting time recording…

> We usually charge clients on the basis of hourly charging rates…."(*A list of hourly rates, with review provisions and some discounts, follows.)*
>
> "… The Company will be invoiced for our fees monthly by reference to the time spent in the previous month. At regular intervals we will provide you with updates as to our fees and disbursements. We will also ensure that billing procedures are streamlined to best meet your requirements.
>
> We intend to try and agree our invoices with you. However if you have a question about any invoice please let me know. If you are still concerned, then you may be entitled to have the bill assessed externally under Part III of the Solicitors Act l974. We will be entitled to charge interest on all, or part of, any unpaid invoice.
>
> Our invoices are payable immediately upon receipt and we draw your attention to the provision in our Terms of Business that we reserve the right to cease acting in the event of non-payment."

31. The Terms of Business say:

> "… These terms will apply to all dealings between us unless supplemented or varied by other terms of business issued by us, or otherwise varied in writing…We will normally bill you at monthly intervals where a matter is expected to take longer than three months to be concluded or where costs incurred are significant…
>
> A final bill will be issued on completion or conclusion of a matter once the full amount of costs applicable has been ascertained… All bills issued are payable on delivery and interest is payable after thirty days at the rate of 1.5% per month for any amount unpaid… If you have any query on a bill this should be raised with us immediately on receipt... You may be entitled to object to a bill by making a complaint to the Legal Ombudsman and/or by applying to the court for an assessment of the bill under Part III of the Solicitors' Act 1974…"

32. The three-monthly minimum retainer fee arrangement is reflected in the first four of the Claimant's invoices. Invoices 274 (5 December 2016), 275 (9 January 2017) and 206 (31 January 2017), cover the three-month period to 31 January 2017. Each charges the monthly fixed fee of £25,000 along with miscellaneous disbursements. Invoice 301, dated 19 April 2017, covers the period 1 to 31 January 2017 and charges fees of £45,020 from which is deducted the £25,000 fee charged in invoice 206 (which covers the same period). In other words, invoice 301 represents the balance of the Claimant's monthly fees for January 2017 over the agreed monthly minimum retainer fee of £25,000.

The Defendant's Evidence

33. As I have mentioned the second Defendant Mr Chanana, who is chairman of the first Defendant, has given evidence in support of the application. He says that the Claimant's retainer does not provide for interim bills to be statute bills. He was not informed at any time by the Claimant that the bills under the General Retainer should be treated as statute bills, nor that time would be running in respect of any application to have them

assessed under the 1974 Act, nor of the procedure to follow to obtain such an assessment.

34. Mr Chanana says that he expected that any issues with costs or disputes about charges would be resolved later, when a final bill was provided. Had he known of any requirement to challenge each invoice within a given time, he would have done so because he was concerned with perceived overcharging by the Claimant. There was correspondence between the parties on the matter between 2017 and 2018, including the Defendant's offer to go to an independent assessment.

35. Mr Chanana says that the credit notes (amounting, as they do, to over £80,000) provided by the Claimant represent a concession to the effect that the first Defendant was overcharged, in particular for WhatsApp messages. The form in which the invoices have been presented by the Claimant make them "incredibly difficult" to review and see whether other time has been recorded fairly and accurately. He continues, he says, to be extremely concerned that significant inappropriate overcharging may be concealed within block time recording entries such as "various emails and correspondence with..." which, he says, forms most of the narratives in the invoices.

36. Mr Chanana argues that the first Defendant's payments were not made in respect of any specific invoices, and the Claimant simply chose to allocate them as it thought fit, so that what seems to be an arbitrary distinction has been made between paid and unpaid bills. He says that it would not be fair to have just those invoices which the Claimant deems unpaid bills to be assessed without also checking those they chose to consider paid bills. His previous solicitors prepared Points of Dispute in general terms in respect of the unpaid bills only, but his current advisers do not consider that this will be sufficient for the court to undertake a proper assessment.

37. Mr Chanana says that he did ask his previous advisers to open up all of the General Retainer invoices, not just those treated as unpaid, to scrutiny. He suggests that the summary judgment procedure may have disrupted this.

38. Much of Mr Chanana's witness statement offers submissions rather than evidence, presumably reflecting advice he has received from his current legal advisers. Even some assertions of fact appear to be based upon advice, such as this paragraph:

> "I also understand that the Claimant has not provided full narratives or evidence of time recording in respect of every Unpaid Bill, nor have we been given access to our matter files. Under the guidance of our previous legal advisors, Points of Dispute were therefore prepared on a very general basis and only in respect of the Unpaid Bills, but we understand from our current advisors that this is not sufficient for a proper assessment to be conducted by the Court".

39. This is on the face of it a rather odd statement. Mr Chanana does not identify the source of his stated understanding, but surely he would be in a position to know first-hand what costs information had been supplied to the first Defendant. The Defence does not deny that each of the General Retainer invoices had been supported, as the Particulars of Claim put it, by "detailed time narratives and details of disbursements incurred". The correspondence I have seen also indicates that the first Defendant requested and received timesheets in support of all of the Claimant's General Retainer invoices, and

discussions between the parties as to what was properly chargeable (which led to the issue of the credit notes) were based upon those timesheets. Further copies were appended to the Claimant's Reply and Defence to Counterclaim in these proceedings.

40. Bearing that in mind, I can only interpret this part of his evidence as meaning that Mr Chanana has been told by his current advisers that the time records and other details supplied by the Claimant do not provide the information they would wish to have for the purposes of the assessment.

41. That takes me to the witness statement of Mersedeh Safa, a costs lawyer with Clyde & Co, made in support of the first Defendant's application.

42. Ms Safa states that no attempt was made by the Claimant to deal with this dispute via the Senior Courts Costs Office, which she describes as the usual procedure for Solicitor and Client disputes.

43. I will mention now that I cannot agree with that. It depends on the nature of the dispute. It is commonplace for solicitors to issue Part 7 proceedings for unpaid bills, and the SCCO could not have dealt with the first Defendant's counterclaim.

44. Ms Safa describes the preparation of a breakdown of the Claimant's invoices as an essential step for assessment and is concerned that Points of Dispute and Replies been prepared by the parties on the basis of the Claimant's invoices, which do not contain the requisite information to make the assessment a straightforward process. It is very difficult, she says, to ascertain from the invoices what matters under the General Retainer are being dealt with by the Claimant on behalf of the first Defendant.

45. There is, Ms Safa adds, no comprehensive reconciliation of items which have been credited. She argues that the detailed assessment needs a proper breakdown, incorporating a narrative of all the related workstreams and how each item claimed for in the invoices falls within them, so as to avoid the Court having to "jump from" the pleadings and witness statements from the Chancery Division proceedings. It would allow identification of items billed, credited or discounted and allow the first Defendant to sensibly consider whether the time claimed is reasonable and in accordance with client instructions.

46. Ms Safa argues that if the assessment proceeds on the invoices alone, the process is likely to be unnecessarily protracted and costly, as there is insufficient detail in the invoices to satisfy the Defendants' legal team without a "deep dive" at the assessment hearing.

47. Given that credit notes were provided, which Ms Safa attributes to errors and overcharging in both paid and unpaid invoices, the Claimant would also benefit, she argues, by having a specialist costs lawyer review their invoices to ensure there are no further issues with items billed and claimed from the Defendants.

48. Ms Safa suggests that the Claimant produce an electronic breakdown of costs, to assist the parties and the Court in managing the assessment and putting the parties on equal footing in accordance with the Overriding Objective.

49. With regard to inspection of the Claimant's files, Ms Safa says that it does not appear that the Defendants have been advised of their potential entitlement to obtain a copy of their file, or at least those parts of the file to which they are entitled as of right, held by the solicitor and/or to inspect those documents in the alternative in advance of preparing the Points of Dispute.

50. As to the status of the invoices rendered under the General Retainer, Ms Safa's evidence is rather equivocal. She does not positively assert that they are not statute bills, but says rather that it has been difficult to establish whether they were interim statute bills or requests for payments on account, with a final bill being due to the Client "on completion/termination of the matter".

51. Ms Safa suggests (as I read her evidence) that if the General Retainer invoices were not initially accompanied by any detailed records that would point to their being non-statute bills, but as I have observed, that is inconsistent with the Defendants' pleaded case, and it would depend upon the circumstances, in particular the information otherwise available to the Defendants. The Claimant asserts that the Defendants initially did not require timesheets. In any case, if that was an omission it was remedied before these proceedings began.

Submissions

52. Mr Jones for the Defendants confirms that they accept that they cannot go behind Deputy Master Nurse's order for a non-statutory assessment of invoices 304, 312, 314, 322 and 1179, which has not been appealed. He argues however that an order for enquiry into and assessment of those invoices does not dispose of the question of whether the Claimant has actually delivered any statute bills, whether final or interim, in respect of work undertaken under the General Retainer. The Claimant has not done so, and the Claimant should now be ordered to render a final bill so that an assessment can proceed on properly particularised information. The application for such an order is not, he says, a collateral attack on the order of Deputy Master Nurse.

53. Mr Jones submits that any statute bill should be complete and final in respect of the period covered by the bill: *Richard Slade & Co v Boodia* [2018] EWCA Civ 2667. Further, because of the very strict time limits applicable to applications by clients for the assessment of bills under the 1974 Act, in the words of Fulford J in *Adams v Al-Malik* [2003] EWHC 3232 (QB) (at paragraph 48):

> "In particular the party must know what rights are being negotiated and dispensed with in the sense that the solicitor must make it plain to the client that the purpose of sending the bill at that time is that it is to be treated as a complete self−contained bill of costs to date…"

54. Costs Judge Rowley applied the principle in this way in *Masters v Charles Fussell & Co LLP* [2021] EWHC B1 (Costs) (at paragraphs 28-29):

> "The difficulty in a client suing his solicitor while still instructing him is immediately apparent and does not really require High Court authority. It is often prayed in aid as a special circumstance when the challenge is outside the initial month. It seems to me to be self-evident that most clients would expect any issues with costs of this sort to be dealt with either by

> communicating with the solicitor to resolve perceived problems or at the end of the case when the inevitable conflict between solicitor and client would be less problematic. Whether a proactive approach of approaching the solicitor was undertaken or the client simply waited till the end of the case, the one month time limit would have been long gone by the time the client considered whether to challenge the bill in court…
>
> It is for this reason that in order to "make it plain" to a client that he is receiving an interim statute bill, it seems to me that the information given at the outset needs to make clear that there are time limits and indeed give some indication of what those time limits are. The idea that several months, or, in this case, years after the engagement letter and terms and conditions were provided, the client ought to be alive to the fact that he has an entitlement under the Solicitors Act if he challenges bills promptly, seems to me to be far-fetched. There is no mention of the Solicitors Act on the invoices even to prompt such a recollection. …"

55. In this case, says Mr Jones, neither the General Retainer nor the Claimant's terms of business so much as referred to the existence of time limits under the 1974 Act. The invoices make no reference to the Act at all. It follows, he says, that the invoices rendered by the Claimant cannot have had the status of interim statute bills. A statute bill remains outstanding and delivery of such a bill should be ordered. It makes obvious sense that that bill should be drafted in such a way as to identify clearly the work represented by the invoices which are to be subjected to a non-statutory assessment. The rest of the work covered by the statute bill, once delivered, can be assessed under the 1974 Act.

56. Mr Jones argues that the arrangements currently in place for the assessment of the Claimant's charges are unsatisfactory. The invoices themselves are entirely devoid of detail, and it would not be workable to supply the relevant surrounding detail through witness statements or time recordings in relation to work carried out between four and five years ago. There are particular concerns to be addressed: the Claimant appears to have charged for multiple WhatsApp messages in six-minute units, an issue partly addressed by the issue of credit notes which cannot however be attributed to any particular invoices.

57. Because the information currently before the court is not sufficiently detailed to assist either the parties or the court in conducting a detailed assessment, the Defendant is entitled to inspection of the Claimant's General Retainer files in the usual way and should be provided with the opportunity to file Points of Dispute to a properly particularised bill.

58. Mr Slade for the Claimant points out that the first four invoices in the series fall within the 3-month minimum monthly retainer arrangement and argues, depending on the nature of the work done, that the General Retainer could properly be considered to be a contentious or non-contentious business agreement. Referring to *Rutter v Sheridan-Young* [1958] 1 WLR 444 he argues that the Defendants do not have a right to require the delivery of a statute bill. In any event, the court's power to order the delivery of a statute bill is an exercise of the court's inherent jurisdiction and as such, of necessity, discretionary. It is not justified on the facts of this case.

59. That aside, the General Retainer invoices are statute bills and the statutory time limits for any order for assessment have expired. The General Retainer stated expressly that the first Defendant was to be invoiced monthly, by reference to the time spent in the previous month, and that there would be a right to assess those bills under the 1974 Act. These provisions did make it plain that the first Defendant would be receiving statute bills.

60. Even if that were not the case, a natural break can be identified from the point when the Claimant ceased working for the Defendants, from December 2017 onwards. It was plain that the final invoice, dated 1 December 2017, was the last in the sequence and that the Claimant's work had concluded. The Defendants understood that the retainer was at an end and would have expected that last invoice to be the Claimant's final bill.

61. All the invoices in relation to which the Defendants now seek a statutory assessment were paid at least three years ago. By virtue of section 70(4) of the 1974 Act there is an absolute bar on the statutory assessment of paid bills after 12 months. As for unpaid bills, section 70(3) provides that no assessment may be made of a bill after 12 months from delivery except in special circumstances. No such circumstances are made out, or even alleged. The Defendants are out of time to apply for the statutory assessment of the paid General Retainer invoices.

62. Further, they are not in a position to resile from the contractual agreement reached before Deputy Master Nurse, as embodied in the terms of his order; to demand a revision of the terms of the order; or to appeal it. Any entitlement to a statutory assessment expired when the Claimant obtained judgment for the outstanding balance of the General Retainer invoices, as did the Defendant's opportunity to take issue with the statutory status of the General Retainer invoices.

63. If the Defendants did not take the opportunity to have the Claimant's invoices reviewed by an experienced costs lawyer prior to filing their points of dispute, that is a matter between them and their advisors, but the presence of leading counsel at the hearing before Deputy Master Nurse suggests that the Defendants were not without expert assistance.

64. As for the supply of a breakdown, Mr Slade argues that the authorities on non-statutory assessment make it clear (*In re Park* [1887] Ch 326) that, unlike a statutory assessment, the court must assess by references to the solicitor's bills themselves. The court has no power to order a breakdown.

65. The Claimant has he says supplied to the Defendants those documents from its file which are properly its client's property. There is no basis for any order for disclosure, which would only be of any use if the court would take the view that new points of dispute should be ordered. Otherwise, the Claimant will file its papers in support of its bills prior to the assessment hearing in the usual way.

CONCLUSIONS

Ordering the Delivery of a Statute Bill

66. This court has an inherent jurisdiction (extended, but not created, by section 68 of the 1974 Act) to order a solicitor to deliver a bill of costs. Whatever the relevance of *Rutter*

v Sheridan-Young to the circumstances of this case (and I suspect that it may be limited, as I am not at all sure that the 1974 Act provides for a hybrid contentious/non contentious business agreement) that must be, as Mr Slade says, a discretionary remedy.

67. An obvious example of circumstances in which it would be appropriate to make such an order would be where a solicitor has been paid by a client for services, but has refused to render a statute bill, thereby denying the client the opportunity, if so advised, to ask the court to assess the reasonableness of the amount charged for those services. One of the questions I have to address is whether, if as the Defendants argue no statute bills have ever been delivered under the General Retainer, this would be a case in which it would be right and fair to make such an order.

68. In that context, I should first deal with Mr Chanana's assertion that the Claimant has arbitrarily applied payments received from the Defendants to the earliest in the series of invoices rendered under the General Retainer. I do not see that as arbitrary at all. Where a series of invoices has been rendered over a period of time, it is an established principle that payments received should be applied to them in date order, so that the earliest are treated as paid. "Clayton's case", *Devaynes v Noble* (1816) 1 Mer. 572, is at the root of that principle, which is particularly important if (as in this case) the solicitor's retainer provides for interest to accrue upon unpaid invoices.

69. That aside, the parties have in effect accepted that the monies received by the Claimant should be applied in that way. They have taken over three years from the termination of the Claimant's retainer to implement through the order of Deputy Master Nurse an agreed arrangement whereby the earliest in the series of invoices rendered under the General Retainer have effectively been treated as paid and settled, and the remaining wholly or partly unpaid invoices are to be subjected to the scrutiny of the court. The latest of the invoices treated as paid, number 302, was rendered in April 2017, some 4½ years ago.

70. The Defendants could at any time over the three-year period between the termination of the retainer and the Deputy Master's judgment have taken an entirely different line, challenging the status of the invoices as statute bills, applying for the delivery of a final statute bill and applying for that bill to be assessed, or at least taking the position that they wanted all of the General Retainer invoices to be subjected to a non-statutory assessment. They did not.

71. I have not lost sight of the fact that Mr Chanana asserts that he did want his advisers to procure an order for the assessment of all of the General Retainer invoices, but I do not find his brief and rather vague evidence in that respect persuasive. Nothing to that effect seems to have been communicated to the Claimant. On the contrary, following the hearing before Deputy Master Nurse Mr Slade provided a draft order to Mr Williams QC which listed the invoices to be assessed. Mr Williams offered some quite extensive amendments but did not take issue with the list of invoices to be assessed, which duly found its way into the final, sealed order.

72. I find it difficult to accept that communications between the Defendants and their former advisors could have broken down so badly that their advisors failed to mention to the Claimant that the Defendants wanted all of the General Retainer invoices to be assessed. I can see that they might have thought it best not to press for assessment of

the paid bills, if only to avoid running up time and costs on some of the arguments I have heard. If however it is indeed the case that they failed to implement Mr Chanana's instructions, that would be something for him to take up with them.

73. Even assuming that no statute bills had ever been rendered by the Claimant under the General Retainer, it does not seem to me that it would be appropriate now to make an order that would unpick the agreed arrangement embodied in the order of Deputy Master Nurse solely because the Defendants, years into the litigation, now wish radically to revise their position. To do so would be, as the Claimant contends, to support a collateral attack upon the Deputy Master's order.

74. For those reasons, even if the Defendants are right to say that the Claimant has never delivered a final statute bill, I am not persuaded that it would be appropriate for me to make an order that the Claimant must now do so.

75. I should add that I do not believe that it is open to me to order that the Claimant deliver a statute bill in a format dictated by me, whether in the spreadsheet form contended for by the Defendants or otherwise. I would refer to the judgment of Mr Justice Soole in *Parvez v Mooney Everett Solicitors Ltd* [2018] EWHC 62 (QB), at paragraphs 57 and 58: only a solicitor can determine the content and terms of that solicitor's claim for payment. Neither the client nor the Court can make that determination on the solicitor's behalf.

Bills and Breakdowns

76. This takes me to the important distinction between the statute bill delivered by a solicitor and the breakdown that may be ordered by the court under CPR 46.10. I agree with Mr Slade that a non-statutory assessment is an assessment of the solicitor's bill or bills, but only because all solicitor/client detailed assessments, whether statutory or not, are assessments of the bill that has been delivered. The breakdown is nothing more than a tool to assist the assessment of that bill. It does not replace it.

77. That is why, for example, where the solicitor has delivered a discounted bill and the client has applied under section 70 of the 1974 act for detailed assessment, the solicitor is entitled to produce a breakdown showing the full, undiscounted value of the work done and disbursements incurred. The client will then have to shoulder the burden of showing, by reference to the full breakdown, that the solicitor's reasonable fees and disbursements are less than the amount of the bill actually delivered. If the breakdown is reduced by one fifth or more, but the bill is not, then the "one-fifth rule" embodied in section 70(9) of the 1974 Act will operate in the solicitor's favour, not the client's.

78. I do not accept Mr Slade's contention that on a non-statutory assessment, the court does not have the power to order a breakdown of the solicitor's bill. The court's case management powers under the Civil Procedure Rules are not limited by 19th century authority. In my view, the court can make any order it sees fit in order to achieve the overriding objective. That includes the delivery of a breakdown, if a breakdown is needed for the efficient and fair assessment of the solicitor's bill.

Whether the General Retainer Invoices are Statute Bills

79. The first observation to make in this context is that the proposition that the General Retainer invoices are not statute bills is inconsistent with each party's Statement of Case and with each party's conduct of the proceedings to date.

80. By that I mean that the Claimant has issued CPR Part 7 proceedings (of which the assessment before me is a part) for the recovery of the costs and disbursements represented by the General Retainer invoices; that the Defendants have not challenged the status of the General Retainer invoices as statute bills, which could potentially have defeated the General Retainer claim completely; that, expressly, the only issue between the parties on the summary judgment application before Deputy Master Nurse was whether the first Defendant had already paid all that was due under the General Retainer invoices; that the Claimant now has judgment for any outstanding, unpaid balance of all of those invoices, supported by a substantial payment on account; and that an enquiry and assessment has been ordered to establish what that balance is, the outcome of which will bind both parties.

81. None of that is consistent with the proposition that the General Retainer invoices are mere requests for payment on account. As I have said, one cannot issue proceedings for the recovery of the costs due under a bill that is not a statute bill. The Claimant's action for recovery was by definition based upon the proposition that the General Retainer invoices, whether individually or collectively, are statute bills and it was incumbent upon the Defendant to say that that was not accepted.

82. I would add that even if the court has an inherent jurisdiction to order a non-statutory assessment of an invoice that is not a final statute bill (which seems unlikely, given that the invoice would have no legal force) I find it impossible to conceive of any circumstances in which that would be appropriate. It would, equally, be pointless to order an enquiry and account into a solicitor's charges before they have been finalised.

83. For those reasons the Defendants' revised position, if accepted, would make nonsense of the agreed terms of Deputy Master Nurse's order. It represents a challenge to that order which it is not open to me to entertain.

84. In summary the Defendants have already accepted for the purposes of these proceedings that the Claimant's General Retainer invoices, whether individually or collectively, had the status of a statute bill or bills, and both parties are now in consequence bound by a judgment that can only have been given on that basis. It is, as Mr Slade has said, too late for them to pursue another case now.

85. That being the position, it is for present purposes immaterial whether the General Retainer invoices should properly be treated as a *Chamberlain* series rather than as a collection of individual statute bills. As Mr Slade says, if the General Retainer invoices are to be treated as stand-alone statute bills, a statutory assessment of the paid bills is barred by section 70(4) of the 1974 Act. If they are a *Chamberlain* series concluding with the last, delivered on 1 December 2017, then they would be treated as a single, partly paid bill, delivered several years ago and in respect of which the Claimant has obtained judgment. Any order for a statutory assessment may, by reference to section 70(3), only be made under special circumstances, which have not been established. On

the contrary, everything the Defendants have done to date militates against making an order for a statutory assessment.

Case Management

86. I am not in a position to take a final view on the extent to which the Defendants' concerns (or rather, those of their current advisers) as to the practicability and efficiency of the assessment of invoices 304, 312, 314, 322 and 1179, as currently arranged, might be justified. I have seen nothing in the Points of Dispute that suggests that the person responsible for drafting them felt unable to analyse the information provided and to extract from it appropriate objections, including a spreadsheet identifying specific contested items. An example offered by Mr Jones, at general point 2, seems to me only to show that some of the time entries (listed, I believe, in a spreadsheet that I have not yet seen) are criticised as vague and inadequate to support the sums charged, which if justified may well result in costs being disallowed (unless the Claimant's files offer adequate support).

87. I note that the Claimant's Replies argue, relying on *Ainsworth v Stewarts Law LLP* [2020] EWCA Civ 178, that the Points of Dispute are not adequately particularised but (subject to any submissions I might hear) I would observe that the Claimant cannot have it both ways. *Ainsworth v Stewarts Law LLP* was a statutory assessment in which the client's representative had received a full breakdown and inspected the files. If in this non-statutory assessment the Claimant is not obliged either to descend to the level of particularity that would be furnished by a breakdown or to allow an inspection of its files, then the Defendants cannot be expected to respond in *Ainsworth* detail.

88. I do not necessarily see it as problematic that the Claimant's credit notes are not attributable to any particular invoice. Whilst bound by the final amount of its invoices as reduced by its credit notes, the Claimant is entitled on assessment to show the full value of the work done. It does not have to set a credit off against any particular part of it.

89. For the reasons I have given I am not satisfied that it is appropriate to make an order unravelling the process that has already been put in place and substituting another that is more to the Defendants' liking. In particular I am not persuaded that it is necessary or appropriate to order the delivery of a breakdown.

90. I am however minded to undertake a review of all of the detailed information that has been supplied in support of the Claimant's bills and of the Defendant's full responses, including the spreadsheet of detailed objections, which I do not believe that I have seen. Once I have reviewed that information for myself I can take a view on whether any further directions may be needed to render the detailed assessment process as efficient and cost-effective as possible. Subject to any submissions the parties may wish to make, I propose to make an order that that information be filed for review by me, following which if necessary I will arrange a directions hearing to discuss how best to move matters forward (I know, for example, that Mr Slade had it in mind that some witness evidence might be needed).

91. I cannot entirely rule out the possibility that I might, at that stage, require the Claimant to provide more detailed information, whether by way of breakdown or otherwise, but

I would be reluctant to do anything that means that the work done to date on Points of Dispute and Replies is wasted.

File Inspection

92. Ms Safa says that it would appear that the Defendants have never been advised on such rights as they have to obtain copies from or to inspect the Claimant's files, whereas Mr Chanana, who ought to know what advice was given, says nothing about it. Under the circumstances I can only accept Mr Slade's assurance that the Claimant has supplied to the Defendants all the documents to which they have a right. In the light of that, and the other conclusions I have reached, I would not consider it appropriate (assuming that I have the power to do so) to make an order for the inspection of the Claimant's files by the Defendant's new advisers.

Summary of Conclusions

93. Even if this were a case, as the Defendants argue, in which the Claimant has never delivered a statute bill it is not a case in which it would be appropriate to exercise the court's discretion to order that such a bill now be delivered. To do so would be to support a collateral attack upon the order made by Deputy Master Nurse on 15 February 2021, which sets out an agreed arrangement by which the earlier invoices rendered by the Claimant are to be treated as paid and settled, and the unpaid remainder are to be subjected to the scrutiny of the court. Nor do I have the power to order that the Claimant deliver a statute bill in any particular form.

94. Both parties have, from the outset of this litigation to the judgment obtained by the Claimant on 15 February 2021, conducted these proceedings on the basis that all of the invoices rendered by the Claimant under the General Retainer had the status, whether individually or collectively, of a statute bill or bills. The judgment obtained by the Claimant, which sets out the terms of this assessment, is inconsistent with any other conclusion. It is too late for the Defendants now to attempt to argue a different case before me.

95. If the General Retainer invoices are individual statute bills rather than a *Chamberlain* series, this court does not have the power to order the statutory assessment of those paid more than 12 months ago. If they do form a *Chamberlain* series, no order for statutory assessment could be made except under special circumstances, and no such circumstances have been shown.

96. I am not persuaded that it is appropriate for me to restart the process of assessing invoices 304, 312, 314, 322 and 1179 by making an order either for the inspection of the Claimant's files or for the Claimant to deliver a breakdown, but subject to submissions I do propose to review the information provided in support of the Claimant's bills and the objections taken to them, to determine whether further directions may be needed.